IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: April 17, 1996.

SPECIAL CRIMINAL APPLICATIION NO. 374 OF 1995

For Approval and Signature:

THE HON'BLE MR. JUSTICE H.R. SHELAT.

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not ?

3. Whether Their Lordships wish to see the fair copy of Judgment ?

4. Whether this case involves substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

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Shri K.P. Raval, APP for the petitioner.
Shri P.M. Thakkar, Advocate (Shri M.M. Tirmizi with him) for the respondent.

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State of Gujarat : Petitioner..

Versus

Siddik Haji Ibrahim Patel : Opponent.

Coram: H.R. Shelat,J.
(17-4-1996)

JUDGMENT:

By this application, the State has brought the order dated 30-11-1994, passed by the then learned Additional Sessions Judge at Vadodara, in Criminal Appeal No. 27 of 1994 on his

file, setting aside the order dated 12-5-1994, passed by the then Dy. Conservator of Forest at Chhotaudepur, and directing the petitioner to hand over the teak wood seized together with Rs.1000/- the amount of penalty, to the opponent, under challenge.

2. Owing to Narmada Dam Project certain lands and many villages were likely to be immersed in water. The Government of Gujarat planned for the rehabilitation of those affected not only providing lands elsewhere but building materials and some amounts also. The persons affected were permitted to take wreckage of their huts and tress grown on their lands. Kanubhai Shankerbhai, Naika Jugla Vasava and others affected, migrated from Sinduri a village in Dhule District of Maharashtra State to Suratalav/Tarsada along with wreckage, i.e. baulk joists, raftars, poles, ridges tiles and certain logs of teak wood grown on their lands. Being poor and in dire need of money for their livelihood, they decided to sell out the teak wood in surplus. The respondent residing at Godhra purchased 50 logs of teak wood from Kanubhai Shankerbhai and Naika Jugla Vasava. By hiring the truck GTB 6765 the teak wood purchased were being taken to Godhra on 28-4-1994. When the truck reached the Halol Forest Check-post, the round forest officer intercepted and checked. He suspected interloperring by illegal transportation of the forest produce as the driver of the truck was not having any pass or permit and there was no hammer mark of forest department on the logs. He hence attached the truck along with the woods; and report thereof was made to his higher officer. A case Pavagadh Round Cri. Register No. 6/94-95 was then registered and inquiry under the Indian Forest Act (hereinafter referred to as `the Act') was initiated. The truck was later on released but the log-woods were seized u/s. 52 keeping Sec. 26(1)(f) & (g) and Sec. 41(2)(b) of the Act in mind. Further the opponent was directed to pay Rs.1000/- by way of compensation. The order of seizure and compensation came to be passed by the Dy. Conservator of Forest on 12-5-94. The respondent then preferred Cri. A. No. 27 of 1994 before the Court of Sessions at Vadodara. The then learned Addl. Sessions Judge at Vadodara allowed the appeal, set aside the order of the Dy. Conservator of Forest and ordered to hand over the seized woods and Rs.1000/- to the opponent. Being aggrieved by such order, this petition is filed.

3. The learned advocate for the petitioner contended that this petition under Articles 227 or 226 of the Constitution of India was not maintainable; the appeal ought to have been filed. To deal with the submission, the relevant provisions of the Act must be looked into. Admittedly u/s. 52 of the Act, the goods are seized, and so the seized goods are to be dealt with in accordance with Sec. 61A to Sec. 61G, added to the Act by amendment made by the State of Gujarat. As per Sec. 61-A forest

produce seized u/s. 52 are to be produced before the authorised officer who undergoing necessary procedure may pass the order of confiscation of the property. Any forest officer not below the Conservator of Forest empowered by State issuing notification may examine the record and make inquiry and may pass the order as deemed fit u/s. 61-C. The party aggrieved by any order u/s. 61-A or 61-C of the Act, can file appeal before the Sessions Judge having jurisdiction over the area in which the property to which the order relates to has been seized. Sec. 61-D(2) of the Act, makes the order of the Sessions Judge final and so the order passed by the Sessions Judge cannot be questioned in any Court of law by way of appeal or revision. However High Court's supervisory jurisdiction under Art.227 of the Constitution of India for limited purpose continues to hold the field. When that is so, the petition under Art.227 is maintainable. This court has way back in 1985 answered the point raised in the case of Manubhai Babubhai Patel v. Deputy Conservator of Forests, Valsad & Anr. - 26(2) [1985(2)] G.L.R. 836, holding that in such case petition is maintainable. But I may add, for limited purpose. The contention therefore fails.

4. About the validity of the seizure of the teak wood, submissions are made contending that the requirements of law are not satisfied. To deal with the same relevant provisions of the Act must be borne in mind. Section 52 of the Act applicable to the State of Gujarat owing to State amendment reads as under:-

"52. Seizure of property liable to confiscation.__

(1) When there is reason to believe that a forest-offence has been committed in respect of any forest-produce, such produce, together with all tools, boats, vehicles or cattle used in committing any such offence, may be seized by any Forest-officer or Police Officer.

(1A) Any Forest Officer or Police Officer may, if he has reason to believe that a vehicle has been or is being used for the transport of forest produce in respect of which there is reason to believe that a forest offence has been or is being committed, require the driver or other person in charge of such vehicle to stop the vehicle and cause it to remain stationary as long as may reasonably be necessary for examination of the contents in the vehicle and inspection of all records relating to the forest produce and in possession of such driver or other

person in charge of the vehicle or any other person in the vehicle.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure__

(a) where the offence on account of which the seizure has been made is in respect of the forest produce which is the property of the State Government or in respect of which the State Government has any interest, to the concerned authorised officer under section 61A; and

(b) in other cases, to the magistrate having jurisdiction to try the offence on account of which the seizure has been made.

Provided that, when the forest-produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior."

A perusal of Section 52 shows that the Forest Officer or the police officer, when he has a reason to believe, on the basis of some material, and not on mere suspicion, that a forest offence has been committed or is being committed qua the forest produce, he may seize the forest produce along-with all tools, boats, vehicles or cattle used in committing the offence. When the offence in respect of the forest produce is envisaged, one cannot by pass the definition of the forest produce. The term `forest produce' is defined vide Clause (4) of Section 2 of the Act which reads as under:

"2(4). "Forest-produce includes __

(a) the following whether found in, or brought from a forest or not that is to say :-

timber, charcoal, caoutchouc, catechu wood oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds, kuth and myrobalans; and

(b) the following when found in, or brought from, a forest, that is to say:-

(i) trees and leaves, flowers and fruits, and all other parts or produce, not hereinbefore mentioned, of trees,

(ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,

(iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey, and wax, and all other parts of produce of animals, and

(iv) peat, surface soil, rock, and minerals (including limestone, laterite, mineral oils, and all products of mines or quarries);"

In Cl.(a) to Sec.2(4) of the Act, when the word "timber" is used it can well be said that forest produce includes timber. In the case on hand teak woods are seized. It is therefore necessary to look into the definition of timber. Sec. 2(6) of the Act defines the timber which reads thus:

"2(6) "timber" includes trees when have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not; and"

(7) xx xx xx xx

A combined reading of the definitions of "forest produce" and "timber" unequivocally shows that the teak wood fallen, felled or cut up or fashioned or hollowed out for any purpose or not is definitely covered. After felling the tree, even if by sawing or otherwise it is shaped as baulks, joists, raftars, planks and polls, etc, the same will not lose its characteristics of a forest produced till transformed into another object of different character or different and distinct commodities, i.e. after being used while erecting a structure or a hut, a house; or building or preparing furniture or other articles. Those pieces of wood which can be termed wreckage would not be the forest produce, but certainly rest of the logs of the teak-wood would being the timber, will remain to be the forest produce.

5. It has been contended on behalf of the petitioner that by removing the teak-wood offences under Sec. 26(1)(f) and (g) of

the Act were committed as the timber trees (teak) were felled and removed from the forest area. A perusal of the record of the lower forum shows that statements of Laxman Dhula Naik, Jayesh Gala Naik, Firoz Sattar Sakla, Shantilal Ranchhodbhai Tadvi, Nayka Jugla Vasava, Kanubhai Shankerbhai Tadvi, Siraz Yusuf Shaikh, were recorded, and panchnama of the court yards of Kanubhai Shankerbhai Tadvi and Nayka Jungla Vasava was drawn. Another panchnama soon after the seizure of the truck and goods was drawn near the check-post. What can be deduced from these statements and panchnamas is that Kanubhai Shankerbhai Vasava and Nayka Jugla Vasava had obtaining passes from Forest Department, which are produced on record, brought the wreckage and teak wood from village Sinduri as their village was evacuated because of Narmada Project. They being poor and in dire need of money sold out the excess wood to the present opponent for Rs.25,000/-. In all 50 logs of wood were sold, of them 27 were old being the part of the wreckage, while 23 were new i.e. spick and span. It also transpires that the goods were removed from the residence of these two persons at Tarsada which is admittedly not situated within the reserved forest area. When the goods are removed by the opponent from the non-forest area namely Tarsada and initial removal upto Tarsada was under the pass issued both the sections would not come into play. The contention advanced on behalf of the petitioner therefore gains no ground to stand upon.

6. It was next contended that the opponent had committed the offence u/s.41 regulating transit of forest produce. It may be noted before the contention is dealt with, that Sec. 41 is neither the provision casting an obligation on the person to do or not to do a particular act, nor the penal provision for the wrong done. By that provision the State Govt. is vested with power to make Rules to regulate the transit of forest produce relating to the subjects namely export, import, movement, transit, route of transit, marking, duty, royalty, storing places like depots etc., so as to check malpractices,fraud,or mischief, or cheating or misappropriation, dishonesty, or unfair trade-practice, or loss being caused to Government by different devices, or unjust enrichment or marring the common-good. It is therefore the mistaken impression of the petitioner that Sec. 41(2)(b) of the Act being the penal provision will come into play, if not, Sec. 26(1)(f) or (g). However, it should be noted that u/s.41, the then Bombay Government to curb mischief, unjust trade-practice,corrupt-practice, fraud etc., framed Bombay Forest Rules, 1942 which are made applicable to the State of Gujarat. Rule 66 thereof reads as under:-

"66. Regulation of transit of forest produce by means of passes.___

No forest produce shall be moved into, or

from, or within any district of the State of Bombay, except as herein provided, without a pass from some officer or person duly authorised by or under these rules to issue such pass, or otherwise than in accordance with the conditions of such pass or by any route or to any destination other than the route or destination specified in such pass :

Provided that no pass shall be required for the removal__

(a) except to a bunder, landing place or railway station__

(i) of any forest-produce which is being removed for private consumption by any person, in exercise of a privilage granted in this behalf by the State Government, or of a right recognised under the Act within the limits of a village as defined in Bombay Land Revenue Code, 1879, in which it is produced,

(ii) of twigs, leaves, brushwood and grass intended solely for conversion into ash-manure,

(iii) of such small branches as are given gratis from departmental cutting solely for private consumption,

(b) of firewood not exceeding three inches in diameter at the thickest part, grass or leaves, the property of one person or the joint property of two or more persons, which is conveyed in quantities not exceeding one head load once in 24 hours unless it be brought to a bunder, landing place or railway station or to any area to which the State Government may from time to time declare by notification in the Bombay Government Gazette that this exemption shall not

extend, or

(c) of such forest-produce as may be exempted by the State Government from the operation of the rules in this Chapter by notification in the Bombay Government Gazette."

It should hardly be stated that wherever the word "Bombay" appears in Rule 66, the word "Gujarat" has to be read. By this Rule, the movement or transit of forest produced from one place to another in the State cannot be effected without obtaining necessary pass from the officer/person duly authorised to issue pass; and contrary to the conditions of the pass; except in cases where pass is not required. As per Sec. 78 of the Act the Rules framed u/s. 41 shall have the force of law as if enacted in the Act, and so breach of the Rule if committed would constitute the offence under the Act. The breach of the Rules is made penal vide Sec. 42.

7. How removal of the forest produce from one place to another without pass would constitute the offence under the Act is also the point posed before me. Above quoted Sec. 2(4) is the answer to the contention raised. The meaning of the expressions underlined hereinabove while quoting Sec. 2(4) is significant. It should be noted that Sec.2(4) divides the forest produce into two categories, the first refers the goods listed in Clause (a), while second refers the goods listed in Clause (b). Vide Clause (a) the goods listed therein are covered within the meaning of the expression "found in" or "brought from a forest or not", and it is because of their nature whether they are found in a forest, or not or brought from a forest or not; while for the second category Clause (b) contemplates those goods found in or brought from a forest, not by virtue of their nature alone but by virtue of the fact that they are found in or brought from a forest. The words "found in" or "brought from" appearing in Clause (b) of Section 2(4) therefore contemplate the forest to be the source or original depository of the forest produce. The words "found in" actually refer to things growing in forest like timber, trees, fruits, flowers or mineral deposit or stones existing in the forest. If the goods covered by Clause (b) are brought from the non-forest area the same would not fall within the ambits of the words "brought from a forest" i.e., within the area of forest. Thus, Clause (a) has a wider coverage than Clause (b). Clause (b) confines to the goods within the forest area while Clause (a) covers the goods not only found within the forest area or brought from forest area but also the area other than forest. It should be noted that the forest produce may be of Government ownership or private ownership, because definition thereof includes not only the goods listed therein are covered within the meaning of the expression 'forest produce grown on or

collected from the property of Government but also that grown on or collected from the property of private individual. In short, removal of forest produce covered by Cl. (a) of Sec. 2(4) from one place to another, regardless of both or either of the places being situated within the forest area or not, would constitute offence if pass or permit is not obtained; while removal of forest produced covered by Cl. (b) will constitute the offence only when the same are found in; or brought from the forest area, i.e. source must be the place within the forest area. Rule 66 of the Bombay Forest Rules goes a step-father. Without any categorisation, or confinement to any area, it prohibits transit of every forest produce without pass, or contrary to the terms and conditions of the pass, unless exception to the rule vide proviso comes into being. What can therefore be deduced from the aforesaid provisions is that whoever, when exception provided is not attracted, removes or transport the forest produce without pass, or contrary to the conditions of the pass, from one place to another regardless of the same being in forest area or not, and regardless of the ownership thereof (Govt. or private) commits the offence under the Act made punishable u/s.42.

8. At the time of checking near Halol Check-post, the forest officer could not see the hammer-marks on the teak wood which certainly falls within the definition of "timber". On being questioned the driver of the truck and labourers on the truck did not reply satisfactorily, and made it clear that they did not have pass or permit to carry the teak wood from Tarsada to Godhra. The forest officer had therefore in view of such facts, reason to believe that the offence under the Act was committed, and so he seized both the teak-wood and the truck. All the requirements of Sec. 52 at the time of checking were found. Consequently the seizure of the teak-wood and truck was legal. The contentions advanced on behalf of the opponent therefore fail.

9. If the forest produces are seized under Section 52 under the belief that offence under the Act is committed, the officer seizing the goods has to make a report. As per Section 52, if the goods seized are the Government property, or the Government has any interest, the report has to be made to the forest officer authorised under Section 61-A, who in turn initiates confiscatory proceedings under Section 61-A of the Act, and may considering the facts before him confiscate the forest produce, or may release the property. If he prefers to confiscate the goods, the party aggrieved may prefer the appeal before the Court of the Sessions Judge having jurisdiction over the area within 30 days from the date of the communication of the order. The Sessions Judge hearing the appeal under Section 61-D of the Act may confirm the order or upset the same and his decision is final. Before the order confiscating the goods under Section 61-A is passed, no appeal can be preferred before the Sessions Judge, and

if it is preferred it will not be competent in law and cannot be entertained. After the goods are seized u/s.52 of the Act and before the order in confiscatory proceeding is passed, so far as the law applicable to Gujarat State, is concerned, there is no provision to prefer the appeal before Sessions Judge for redressal of one's own grievances. The party has to wait till the confiscatory order is passed. If the goods seized are admittedly not the Government property or the Government has no interest in the goods, the officer seizing the goods has to make the report to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made. In that case however necessary prayer for getting the goods back if made shall have to be dealt with as per Sec.55 which provides that non-Govt. goods shall subject to Sec. 61-G be liable to confiscation. Section 61-G reads as under:-

"61G. Bar of jurisdiction to certain cases.__

Whenever any forest produce belonging to the State Government or any tool, rope, chain, boat, vehicle or cattle used in committing any offence is seized under sub-section (1) of Section 52 the authorised officer under section 61A or the officer specially empowered under section 61C or the sessions Judge hearing an appeal under section 61D shall have and, notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, any other officer, court, tribunals or authority shall not have, jurisdiction to make orders with regard to the custody, possession, delivery, disposal or distribution of such property."

In case therefore the goods not owned by the Government are confiscated, the party aggrieved has to prefer the appeal before the Sessions Judge. Before the order confiscating the goods is passed u/s. 61-A, no appeal can lie before the Sessions Judge having jurisdiction over the area. In any case therefore the appeal before the Sessions Judge is not competent in law applicable to Gujarat State after the seizure of the forest produce and before the order confiscating the forest produce is passed u/s. 61-A of the Act.

10. The Deputy Conservator of Forest at Chhota-udepur passed the order on 12-5-1994 confiscating 27 old logs of wood out of the total logs of 50, as hammer marks were not thereon and were suspicious because of difference in measurements and description mentioned in the pass permitting transport from Sinduri to Tarsada giving rise to a reason to believe that mischief was

played and under the guise of the wreckage, theft of the forest produce belonging to Government was committed and were sold to the opponent. The preamble of that order on record shows that the seizing officer (Range Forest Officer) had made report about the seizure and so confiscating proceeding u/s. 61-A was initiated. The officer who passed the order was the authorised officer u/s. 61-A. The officer who seized the goods was not authorised to pass the order u/s. 61-A of the Act. The order passed is the result of the confiscatory proceeding and so it is the order u/s. 61-A. In that order written in Gujarati language the words_____ ("ordered to be confiscated") are used, and not"_____ (are seized) and that user makes it clear that confiscatory proceedings were initiated and the order therein came to be passed. In view of the matter, there is no merits in the contention of the petitioner that when order under Sec. 61-A initiating confiscatory proceeding was not passed, and matter was resting at the stage of seizure made u/s. 52, and report of seizure was to be made for initiation of confiscatory proceeding u/s. 61-A of the Act, the appeal before the Court of Sessions at Vadodara was not competent being premature, and on that count the order passed by the learned Addl. Sessions Judge, Vadodara was liable to be quashed and set aside.

11. Mr. Raval, the learned APP representing the petitioner then contended that the order in question passed by the then learned Addl. Sessions Judge at Vadodara was not tenable at law for want of jurisdiction. According to him u/s. 61-D the power to hear and decide the appeal was vested only in Sessions Judge having jurisdiction over the area and not other Judges of the Sessions Court. On behalf of the opponent, Mr. Tirmizi, learned advocate submitted that for want of necessary plea in the petition challenging the order of the learned Addl. Sessions Judge at Vadodara, the court might not entertain the plea and determine the same.

12. It may be stated that the plea about jurisdiction is raised so as to contend that the appeal for want of confiscatory order u/s. 61-A was not competent, and viewing liberally that should be given wide coverage especially when question of fact is not involved. But apart from it, a new plea raising pure question of law and not of facts, going to the root of the case can be allowed to be raised even orally, and affording opportunity to submit on that new plea to the other side the Court can determine the point covered by the new plea. The new plea raised is purely on the point of law although jurisdiction or power of the Addl. Sessions Judge is challenged because determination of the plea raised does not require inquiry into factual aspect. In short question raised is not a mixed question of law and facts. Mr. Raval the learned APP was then permitted to raise the new plea, and time was given to the other side to

submit on that new point.

13. On the next date, Mr. Tirmizy, the learned advocate for the opponent drawing attention to the decision of the Supreme Court in the case of Mohd. Yunus v. Mohd Mustaqim and Others, AIR 1984 S.C. 38, submitted that it would be beyond the ken of my powers to upset the order of the learned Addl. Sessions Judge-Vadodara on the new plea raised. The Supreme Court has in the decision held:

> "A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Art.227. The supervisory jurisdiction conferred on the High Courts under Art.227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority" and not to correct an error apparent on the face of the record much less an error of law. In exercising the supervisory power under Art.227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision".

The Supreme Court has abundantly made it clear that the High Court having supervisory jurisdiction under Article 227 of the Constitution of India cannot even correct the error of law. The High Court can interfere only if it is found that the lower forum had no jurisdiction at all or there was non-application of mind to the relevant provisions of law amounting to error apparent on the face of record, or there is miscarriage of justice. Of course in the case of Manubhai Babubhai Patel (Supra) it is held that such petition is maintainable because the jurisdiction of the High Court under Art. 226 or 227 of the Constitution of India is not ousted or taken away but that decision cannot be interpreted as conveying unfettered jurisdiction as the same is not qualified or elucidated or explained in details with regard to its extent. It cannot be said to have travelled beyond the constitutional frontiers thereof made clear by the Supreme Court. I therefore do not agree with the learned A.P.P. that my jurisdiction is unlimited. The jurisdiction of the High Court is supervisory jurisdiction.

14. Vide Sec. 61-D of the Act the jurisdiction to hear and decide the appeal is conferred on the sessions Judge using the words "Sessions Judge". It should be noted that the words "Sessions Court" are not used. The jurisdiction conferred is persona designata. Within the meaning of "Sessions Court", all

the Judges of that Court namely Sessions Judge, Addl. Sessions Judge and Asst. Sessions Judge are covered or included, but within the meaning of "Sessions Judge" none else but Sessions Judge alone is covered. As the decision in appeal u/s. 61-D of the Act is made final, it seems the Legislature in its wisdom thought it fit to confer jurisdiction only on Sessions Judge, the senior most Judge in Sessions Court. The learned Addl. Sessions Judge, Vadodara was therefore not competent in law to hear and decide the appeal for want of powers. His decision is therefore without any jurisdiction and so it is bad in law. On this count the judgment and order of the learned Addl. Sessions Judge, Vadodars challenged in this petition are required to be quashed and set aside.

15. True u/s. 194 of the Code of Criminal Procedure, the Addl. Sessions Judge and Asst. Sessions Judge have powers to try such cases made over to them by the Sessions Judge for trial; but thereby it would not be logically proper to jump to the conclusion that when the learned Sessions Judge-Vadodara, assigned the appeal to the learned Addl. Sessions Judge-Vadodara for hearing and disposal in accordance with law, he was competent to try the appeal, or that he acquired the power to decide the appeal because by transfer of case, the Sessions Judge cannot confer jurisdiction on another Judge on whom, the statutory provision does not confer, and set the provision of law at naught. To put it in other words, what is not inherently there, or expressly or impliedly barred, cannot be conferred on a Judge by the transfer of a case. Under Sec. 194 of the Code of Criminal Procedure, the Sessions Judge therefore can transfer only those cases, appeals or revisions to the Addl. Sessions Judges or Asst. Sessions Judges which they are in law competent to try and decide. If the Addl. Sessions Judge or Asst. Sessions Judge is not competent or does not have power to hear and decide particular cases, still however those cases are made over to him, the trial or those cases and decision rendered will be bad in law. The contention advanced on behalf of the opponent therefore fails.

16. No doubt in view of Sec. 4(2) of the Code of Criminal Procedure, 1973 the offences under any other law than Indian Penal Code are to be inquired into, investigated, tried and otherwise dealt with according to the provisions contained in the Code; but it is subject to specific or contrary provisions made in the laws under which the offences are to be investigated, tried or dealt with. In other words unless a special law expressly or impliedly provides that certain offences are to be tried exclusively by the Courts constituted under such law or by certain Judges, the jurisdiction of the ordinary courts or other Judges of the same court to try the offences is not excluded. Sec. 61-D of the Act specifically debars other Judges of the Sessions Court from hearing and deciding the appeal; the

jurisdiction to hear and decide the appeal is exclusively vested in Sessions Judge. When thus the Act specifically exclude the Addl. Sessions Judge and Asstt. Sessions Judge, Sec. 4(2) of the Code of Criminal Procedure 1973 cannot help the opponent. The contention that u/s.4(2) of the Code, the learned Addl. Sessions Judge was competent to hear and decide the appeal therefore cannot be accepted.

17. Sec. 9(3) of the Code of Criminal Procedure 1973 will not also help the opponent. It has been contended on behalf of the opponent that in view of Sec. 9(3) of the Code, the Addl. Sessions Judge was competent to hear and decide the appeal as he could exercise the jurisdiction in a Court of Sessions. The contention is misconceived. Under that section the High Court may appoint Addl. Sessions Judges or Asst. Sessions Judges to exercise the jurisdiction of the "Court of Sessions". The Court of Sessions therefore can be manned by several Judges, namely, Addl. Sessions Judge and Asst. Sessions Judge having no separate or independent entity in the sense that court over which he presides while exercising jurisdiction of the Court of Sessions, does not constitute an independent Court of Sessions u/s. 9, but is a part or constituent of the same Court of Sessions headed by the Sessions Judge. The Addl. Sessions Judge and Asst. Sessions Judge therefore can exercise the jurisdiction of the Court of Sessions and not the jurisdiction conferred on Sessions Judge by persona designata. Further exercise of jurisdiction by the Addl.Sessions Judge and Asst. Sessions Judge is limited or can be made limited by one or the another provision in the Code or the Acts. The Addl. Sessions Judge or Asst. Sessions Judge cannot exercise the powers of the Sessions Judge though competent to exercise the powers of the Court of Sessions. Where-under a special law powers are made exercisable by a particular Judge, the same cannot be exercised by other Judges, the parts or component of the Court of which the particular Judge, vested with powers under special law, is also the part or component. Section 9(3) thus envisages jurisdiction of the Court of Sessions which is made exercisable by all the parts or components of the Court of Sessions subject to the provision of other Acts curtailing, withdrawing or enlarging the powers. It does not any way say or convey that powers specially vested in Sessions Judge by persona designata under a special law can be exercised by the Addl. Sessions Judge or Asst. Sessions Judge, because within the meaning of "Sessions Judge", the Addl. Sessions Judges and Asst.Sessions Judges are not included. What in short it makes it clear that powers of the Court of Sessions subject to the provision under special law can be exercised by Addl. Sessions Judge and Asst. Sessions Judge. Those Judges cannot exercise the powers specifically vested in or special jurisdiction conferred on the Sessions Judge alone. Vide Sec. 61-D of the Act Sessions Judge is specifically and specially vested with power to hear and decide the appeal. When special

Act has thus conferred the jurisdiction on the Sessions Judge, the same is not exercisable by Addl. Sessions Judge and Asst.Sessions Judge. The contention therefore fails.

18. Facing with such situation the learned advocate for the opponent cited certain authorities and urged me to hold that there was no jurisdictional error. In the case of State of Karnataka v. Muniyalla - AIR 1985 S.C. 470, the question raised for the decision was whether transfer of a case to City Sessions Judge by the Principal Judge is invalid if there is recital of a wrong section in order which is otherwise within the power of the Principal Judge making it, and not the question whether Sessions Judge can confer jurisdiction on Addl. Sessions Judge or Asst. Judge by making over the case although those Judges are not vested with power, or they are debarred either expressly or impliedly from hearing and deciding particular category of cases. As the decision is not on the point before me, the same cannot be pressed into the services of the opponent. For the like wise reason, the decision rendered in the case of Kehar Singh and others.vs. The State (Delhi Admn.) - AIR 1988 S.C. 1883, does not apply to the case on hand. In that case question about High Court's power to transfer the cases to Addl. Sessions Judges or Asstt. Sessions Judge, when Sessions Judge may not like to allot was on anvil, and not the question whether Sessions Judge or High Court can transfer the case to Addl. Sessions Judge or Asstt. Sessions Judge who does not have power or jurisdiction to try the case. The decision being on different point cannot help the opponent. The question about withdrawal of part-heard cases from the file of the Addl. Sessions Judge arose for consideration in the case of Gambhirsinhji Bhavsinhji Padhoriya vs. State of Gujarat 34(1) [1993(1)] G.L.R. 649 arose; and considering the provisions of Secs. 399, 401 and 409 of the Code of Criminal Procedure, it is held that once the case is made over to the Addl. Sessions Judge and it becomes part heard, the same cannot be recalled in exercise of powers u/s. 409(2). It is observed therein that Sec. 400 of the Code of Criminal Procedure, 1973 empowers the Addl. Sessions Judge to exercise the same powers as the Sessions Judge with respect to the case assigned to him for hearing and disposal. The Addl. Sessions Judge for the purpose of exercise of revisional powers is on par with the Sessions Judge. But such observation cannot help the opponent. Sec. 400 of the Code does not postulate that the Addl. Sessions Judge will be on par with the Sessions Judge vested with special powers under special law i.e. jurisdiction by persona designata. In other words, it envisages Court of Sessions and its parts or components. Hence u/s. 400 Addl. Sessions Judge shall have and may exercise all the powers of the Sessions Judge provided the case transferred to Addl. Sessions Judge, is triable by the Court of Sessions and not by the Sessions Judge alone. The Sessions Judge by transferring the case to Addl. Sessions Judge cannot confer the jurisdiction on Addl. Sessions Judge which is

not conferred by special law; and Addl. Sessions Judge will not acquire the jurisdiction simply because the case is made over to him which is in law cannot be heard and decided by him. The observation in the decision being on different point than the point on hand, and in view of the foregoing reasons the decision will not have any governing effect. Lastly the decision of this Court rendered in the case of Babaldas Becharbhai Chavda v. State of Gujarat & Ors. 34(1)[1993(1)] G.L.R. 317 was brought to my notice. In that case, it is held that if the bail application with regard to the offence under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is made over to Addl. Sessions Judge, there is no illegality if the same is decided by him. In that case the question was about interpretation of "Court of Sessions" and "Special Court" and not "Sessions Judge". The decision being on the point foreign to the point raised before me cannot help the opponent. On no other point, submissions were made.

19. It has been contended on behalf of the petitioner that u/s. 69 of the Act a presumption that the forest produce belongs to the Government arises; but the learned Judge below overlooked that provision of law, and erroneously held that the goods belonged to the opponent. No doubt before any proceeding under the Act rebuttable presumption that the forest produce belongs to Government arises u/s. 69 of the Act; but in view of my limited jurisdiction, the merits of the point raised cannot be dissected. It would be open to the petitioner to submit before the Sessions Judge at Vadodara as for the reasons stated hereinabove the matter is required to be remanded for hearing and disposal.

20. For the foregoing reasons, it is abundantly clear that the learned Additional Sessions Judge at Baroda was not at all competent in law to hear and decide the appeal. The Sessions Judge at Baroda alone was competent. The hearing of the appeal and disposal thereof by rendering the judgment are therefore without any authority, that is contrary to law and that being the error apparent on the face of the record affecting the authority and power of the learned Judge below, I am entitled to interfere with the order under Article 227 of the Constitution of India. The order passed being without jurisdiction has to be quashed. The petition will have therefore to be allowed and the Record & Proceedings are required to be sent back to the lower appellate forum, i.e. Sessions Judge at Baroda for hearing and disposal of the appeal in accordance with law.

21. In the result, the petition is allowed. The judgment and order passed in Criminal Appeal No. 27 of 1994 by the then Addl. Sessions Judge at Baroda, are hereby quashed and set aside. The appeal is remanded to the Sessions Judge at Baroda who shall hear the appeal again affording reasonable opportunity to both the parties and shall dispose of the appeal in accordance with law

latest by 2nd September, 1996. The parties to appear before the Sessions Judge at Baroda on 30-4-1996 at 11.00 a.m.

22. It would be open to the petitioner to prosecute the opponent subject to the law of limitation.

23. Rule is made absolute with no order as to costs.

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